

**BEFORE THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI**

In the Matter of the Application of:

ROOSEVELT CURREN, JR.

**ORDER ISSUING A
PROBATED PRENEED AGENT REGISTRATION**

The State Board of Embalmers and Funeral Directors (the "Board"), pursuant to Section 324.038, RSMo¹, issues a **PROBATED PRENEED AGENT REGISTRATION** to Roosevelt Curren, Jr. ("Curren" or "Registrant") residing at 8227 Glen Echo Drive, St. Louis, Missouri 63146.

As set forth in Section 324.038, RSMo, Registrant may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board's decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Registrant. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated registration pursuant to the laws and administrative regulations relating to Registrant's profession. If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Registrant shall have the right to present

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

testimony, call witnesses on Registrant's behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Registrant make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038, RSMo, authorizes the Board to issue a license subject to probation in lieu of denial and states:

1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to

a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.325.1, RSMo, requires a registration to engage in the practice of selling preneed contracts as a preneed agent and Section 333.325.2, RSMo, sets forth the requirements for registration. These sections state:

1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

- (2) Be eighteen years of age or older;
- (3) Be otherwise eligible for registration under section 333.330;
- (4) Have successfully passed the Missouri law examination as designated by the board;
- (5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

3. Section 333.325, RSMo, became law on August 29, 2009. To allow for the business of preneed sales to continue while the licensing mechanics were put into place by the Board, the Board enacted emergency rule 20 CSR 2120-3.100 that states:

- (1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the "applicant") must fully complete and file with the state board a "Notice of Intent to Apply for Licensure/Registration" (notice of intent) prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The board shall provide the notice of intent as an electronic document on its website. No fee shall be required to accompany the notice of intent. Only the official notice of intent form shall be accepted by the board.
- (2) Applicants may file the notice of intent with the board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the notice of intent is filed by fax or other electronic means, the applicant shall also provide the original signed document to the board by mail or other delivery method.
- (3) All applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo and must certify that, to the best of their knowledge, they are eligible for licensure/registration.
- (4) If the board determines that the applicant lacks the statutory qualifications for licensure/registration, the board may terminate the temporary authorization to practice under the notice of intent by notifying the applicant in writing of the termination and the reason for the termination. An applicant may apply for full licensure or registration even if the board has terminated his/her authority to practice pursuant to the notice of intent.

(5) Any applicant who has filed a notice of intent must file their completed application for licensure or registration with the board no later than October 31, 2009.

(6) The applicant shall keep a copy of the notice of intent and shall prominently display this notice of intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.

(7) Any person with a filed notice of intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the notice of intent, provided that the applicant has timely filed his/her application for licensure and/or registration. This authorization to practice shall be effective from the date the board receives the notice of Intent and shall end on the date the board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The board shall promptly notify the applicant of its decision to issue a license/registration or its denial of same.

(8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the board in its decision to issue or deny any application for licensure and/or registration. In addition, if the board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the notice of intent.

4. Section 333.330, RSMo, authorizes the Board to deny an application for a preneed agent registration and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or

her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

Parties and Background

5. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, and vested with the authority to execute and enforce the provisions of Chapter 333 and portions of Chapter 436, RSMo.

6. Roosevelt Curren, Jr., is an individual residing at 8227 Glen Echo Drive, St. Louis, Missouri 63121.

7. Curren submitted to the Board his "Notice of Intent" that he signed in front of a notary on September 21, 2009 and that the Board received on September 22, 2009.

8. Curren submitted his "Application for Preneed Agent Funeral Director" to the Board that he signed before a notary public on October 30, 2009 (the "Application") and was received by the Board on November 2, 2009.

9. Curren is over the age of eighteen years.

10. Curren successfully passed the exam to be registered as a preneed agent on February 25, 2011.

11. Between the dates of August 28, 2009 and the date of this Order, Curren registered no affiliation with a licensed seller to be eligible for registration as a preneed agent.

12. Curren has now provided the Board with the name and address of a licensed seller for whom he will act as a preneed agent.

Basis for Probation

13. The Board conducted an investigation as to the activity of Curren while his Application was pending.

14. As part of the investigation, the Board requested from the funeral establishment where Curren worked, copies of preneed contracts sold by Curren between August 1, 2009 and February 1, 2011. The funeral establishment provided the Board with 113 insurance funded preneed contracts sold by Curren during this time period.

15. Between August 1, 2009 and February 1, 2011, the funeral establishment where Curren worked held no seller license and thus, had no authority to act as a seller in Missouri.

16. Curren held no authority from the Board to act as a preneed agent between August 1, 2009 and February 1, 2011 because he had not fulfilled the requirements for

licensure including registering with the Board the licensed seller for whom he acted a preneed agent. Section 333.325, RSMo and 20 CSR 2120-3.100.

17. The funeral establishment where Curren worked provided the Board with evidence that Curren sold preneed contracts, as follows:

Date Preneed Contract Signed	Number Sold	Curren's registration status
August 27, 2009 or before	4	No registration required
August 28 - September 22, 2009	8	Not registered
September – October, 2009	8	Registered via Notice of Intent
November 1, 2009 – December 31, 2009	6	Not registered
January 1, 2010 and after	87	Not registered

18. Curren acted as a preneed agent in the sale of 101 preneed contracts when he could not lawfully do so as he held no preneed agent registration as required by Section 333.325.1, RSMo.

19. The Board has cause to deny Curren's application for a preneed agent registration pursuant to Section 333.330.2 (5), (6), (7), (11), and (14), RSMo.

20. The Board finds that issuance of a probated preneed agent registration, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a preneed agent registration to ROOSEVELT CURREN, JR., on **PROBATION** for a period of **FIVE YEARS** (the "Disciplinary Period"), beginning on the date this Order is issued, subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

21. Registrant shall comply with the following terms and conditions of probation during the Disciplinary Period:
- a. Registrant shall keep the Board informed of Registrant's current work and home telephone numbers and addresses. Registrant shall notify the Board in writing within ten (10) business days of any change in this information. If Registrant utilizes e-mail, Registrant shall provide the Board with her current and active e-mail address;
 - b. Registrant shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
 - c. Registrant shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission as set forth in Section 333.330, RSMo;
 - d. Registrant shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
 - e. Registrant shall submit written reports to the Board no later than January 1 and July 1 of each year. Each of these written reports shall state truthfully whether there has been full compliance with the terms and conditions of

this Order and shall fully explain any non-compliance. These reports may be submitted on a form provided by the Board, but failure to receive such a form from the Board shall not excuse the timely filing of any compliance report;

- f. Upon the request by the Board or its representative, Registrant shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Registrant shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active;
- h. Registrant shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of probation; and

22. Upon the expiration of the Disciplinary Period and successful completion of the probation, Registrant's preneed agent registration shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Registrant has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Registrant's preneed agent registration.

23. The Board shall enter no order imposing further discipline on Registrant's preneed agent registration without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

24. If the Board determines that Registrant has violated a term or condition of this Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

25. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on Registrant's preneed agent registration. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

26. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: 11.3.11

Sandy Sebastian
Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors